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5 GUILLERMO BARRETO ORTIZ

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7 UNITED STATES DISTRICT COURT  
8 SOUTHERN DISTRICT OF CALIFORNIA  
9 (HONORABLE ROGER T. BENITEZ)

10  
11 UNITED STATES OF AMERICA,  
12 Plaintiff,  
13 vs.  
14 GUILLERMO BARRETO ORTIZ  
15 Defendant.

CASE NO. 07-CR-2882-001-BEN

MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
DEFENDANT'S MOTIONS

DATE: December 3, 2007  
TIME: 2:00 p.m.

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18 I

19 STATEMENT OF FACTS

20 Mr. Barreto Ortiz has been charged with Title 21, United States Code Section  
21 841(a)(1) and 846, Conspiracy to Manufacture Marijuana Plants, and Title 18, United  
22 States Code 922(g)(5)(A) and 924(a)(2) – Illegal Aliens in Possession of a Firearms;  
23 Title 18, U.S.C. Section 924(c)(1)(A)(i) and (C)(i) – Possession of Firearm in  
24 Furtherance of a Drug Trafficking Offense; Title 18, U.S.C., Section 2 – Aiding and  
25 Abetting; Title 21, U.S.C. Section 853(a)(2), Title 18, U.S.C., Section 924(d) and Title  
26 28, U.S.C., Sec. 2461(c) – Criminal Forfeiture.

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## II

MOTION TO COMPEL DISCOVERY

Defendant Guillermo Barreto Ortiz moves for the production of the following discovery. This motion applies to discovery of which the government attorney knows, or of which the government attorney may become aware through due diligence. See Fed. R. Crim. P.16.

(1) The Defendant's Statements. The defendant requests disclosure of all copies of any written or recorded statements made by him; any written records containing the substance of any oral statements made by the defendant and any written summaries of the defendant's oral statements contained in the handwritten notes of the government agent; any response to any Miranda warnings which may have been given to the defendant; any response by the defendant to interrogatories; as well as any other statements by the defendant. Fed. R. Crim. P. 16(a) (1) (A).

(2) Arrest Reports, Notes and Tapes. The defendant requests the government to turn over all arrest reports, notes, any tapes, or TECS records that relate to the circumstances alleged in the indictment. This request includes, but is not limited to, any rough notes, records, reports, transcripts or other documents which contain statements of the defendant or any other discoverable material. Fed. R. Crim. P. 16(a) (1) (A); Brady v. Maryland, 373 U.S. 83 (1963). The government must produce arrest reports, investigator's notes, memos from arresting officers, dispatch tapes, sworn statements, and prosecution reports pertaining to the defendant. Fed. R. Crim. P. 16(a) (1) (B) and (C); Fed. R. Crim. P. 26.2 and 12(i).

(3) The Defendant's Prior Record. The defendant requests disclosure of his prior record. Fed. R. Crim. P. 16(a) (1) (B).

(4) Evidence Seized. The defendant requests production of evidence seized as a result of any search, either warrantless or with a warrant. Fed. R. Crim. P. 16(a) (1) (C).

1 (5) Tangible Objects. The defendant requests the opportunity to inspect and  
2 copy as well as test, if necessary, all other documents and tangible objects, including  
3 photographs, books, papers, documents, fingerprint analysis, vehicles, or copies of  
4 portions thereof, which are material to the defense or intended for use in the  
5 government's case-in-chief or were obtained from or belong to the defendant. Fed. R.  
6 Crim. P. 16 (a) (1) (C).

7 (6) Request for Preservation of Evidence. The defendant specifically requests  
8 the preservation of all physical evidence that may be destroyed, lost, or otherwise put  
9 out of the possession, custody, or care of the government and which relates to the  
10 charges alleged in the indictment. This request includes any tapes, or the  
11 handwritten notes of the government agents taken while interviewing any witness,  
12 the results of any fingerprint analysis, any audio and video surveillance tapes, the  
13 defendant's personal effects, and any evidence seized from the defendant or any third  
14 party.

15 (7) Reports of Examinations And Tests. The defendant requests copies of  
16 any reports of physical and mental examinations and any scientific tests which are  
17 material to the defense or intended for use in the government's case-in-chief. Fed. R.  
18 Crim. P. 16 (a) (1) (D).

19 (8) Expert Witnesses. The defendant requests the name, qualifications, and  
20 a written summary of the testimony of any person that the government intends to call  
21 as an expert witness during its case-in-chief. Fed. R. Crim. P. 16 (a) (1) (E).

22 (9) Brady Material. The defendant requests all documents, statements,  
23 agents' reports, and tangible evidence favorable to the defendant on the issue of  
24 guilty, which affect the credibility of the government's case, or which may result in a  
25 lower sentence under the United States Sentencing Guidelines. Under Brady,  
26 impeachment as well as exculpatory evidence falls within the definition of evidence  
27 favorable to the accused. United States v. Bagley, 473 U.S. 667 (1985); United States  
28 v. Agurs, 427 U.S. 97 (1976).

1 (10) Giglio Information. The defendant requests all statements and/or  
2 promises, express or implied, made to any government witnesses in exchange for  
3 their testimony in this case, and all other information which could arguably be used  
4 for the impeachment of any government witnesses. Giglio v. United States, 405 U.S.  
5 150 (1972).

6 (11) Jencks Act Material. The defendant requests production in advance of  
7 trial of all material, including dispatch tapes, which the government must produce  
8 pursuant to 18 U.S.C. § 3500. Advance production will avoid the possibility of delay  
9 at the request of defendant to investigate the Jencks material. A verbal  
10 acknowledgment that “rough” notes constitute an accurate account of the witness’  
11 interview is sufficient for the report or notes to qualify as a statement under  
12 §3500(e) (1). Campbell v. United States, 373 U.S. 487, 490-92 (1963). In United  
13 States v. Boshell, 952 F.2d 1101 (9<sup>th</sup> Cir. 1991), the Ninth Circuit held that when an  
14 agent goes over interview notes with the subject of the interview the notes are then  
15 subject to the Jencks Act.

16 (12) Any Proposed 404(b) Evidence. The defendant requests prior notice of  
17 any crimes or bad acts that the government intends to introduce against him in its  
18 case-in-chief. Fed. R. Crim. P. 16(a) (1) (C); Fed. R. Evid. 404 (b) and 609 (b). The  
19 defendant request such notice four weeks before trial in order to give the defense time  
20 to investigate and prepare for trial.

21 III

22 LEAVE TO FILE ADDITIONAL MOTIONS

23 The defendant has not had access to some of the discovery, and the discovery  
24 in this matter may be extremely extensive and complex. As such, additional  
25 information has been requested and it is contemplated that upon receipt of the same,  
26 further motions will have to be filed. Accordingly, defendant prays for leave to file  
27 further motions should such motions be warranted.

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IV

CONCLUSION

Based on the foregoing reasons, Mr. Barreto Ortiz respectfully requests that this Court, 1) compel production of discovery; 2) grant leave to file further appropriate motions.

Respectfully submitted,

Dated: November 9, 2007

/s/ Mark A. Chambers  
MARK A. CHAMBERS  
Attorney for Defendant  
Guillermo Barreto Ortiz